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AN ACT

RELATING TO WORKERS' COMPENSATION; PROVIDING FOR AN
INDEPENDENT MEDICAL EXAM; PROVIDING FOR PERIODIC
EXAMINATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 52-1-51 NMSA 1978 (being Laws 1929,
Chapter 113, Section 19, as amended) is amended to read:

"52-1-51. PHYSICAL EXAMINATIONS OF WORKER--INDEPENDENT
MEDICAL EXAMINATION--UNSANITARY OR INJURIOUS PRACTICES BY
WORKER--TESTIMONY OF HEALTH CARE PROVIDERS.--

A. In the event of a dispute between the parties
concerning the reasonableness or necessity of medical or
surgical treatment, the date upon which maximum medical
improvement was reached, the correct impairment rating for
the worker, the cause of an injury or any other medical
issue, if the parties cannot agree upon the use of a specific
independent medical examiner, either party may petition a
workers' compensation judge for permission to have the worker
undergo an independent medical examination. If a workers'
compensation judge believes that an independent medical
examination will assist the judge with the proper
determination of any issue in the case, including the cause
of the injury, the workers' compensation judge may order an
independent medical examination upon the judge's own motion.

1 The independent medical examination shall be performed
2 immediately, pursuant to procedures adopted by the director,
3 by a health care provider other than the designated health
4 care provider, unless the employer and the worker otherwise
5 agree.

6 B. In deciding who may conduct the independent
7 medical examination, the workers' compensation judge shall
8 not designate the health care provider initially chosen by
9 the petitioner. The workers' compensation judge shall
10 designate a health care provider on the approved list of
11 persons authorized by the committee appointed by the advisory
12 council on workers' compensation to create that list. The
13 decision of the workers' compensation judge shall be final.
14 The employer shall pay for any independent medical
15 examination.

16 C. Only a health care provider who has treated the
17 worker pursuant to Section 52-1-49 NMSA 1978 or the health
18 care provider providing the independent medical examination
19 pursuant to this section may offer testimony at any workers'
20 compensation hearing concerning the particular injury in
21 question.

22 D. If, pursuant to Subsection C of Section 52-1-49
23 NMSA 1978, either party selects a new health care provider,
24 the other party shall be entitled to periodic examinations of
25 the worker by the health care provider the worker previously

1 selected. Examinations may not be required more frequently
2 than at six-month intervals; except that upon application to
3 the workers' compensation judge having jurisdiction of the
4 claim and after reasonable cause therefor, examinations
5 within six-month intervals may be ordered. In considering
6 such applications, the workers' compensation judge shall
7 exercise care to prevent harassment of the claimant.

8 E. If an independent medical examination or an
9 examination pursuant to Subsection D of this section is
10 requested, the worker shall travel to the place at which the
11 examination shall be conducted. Within thirty days after the
12 examination, the worker shall be compensated by the employer
13 for all necessary and reasonable expenses incidental to
14 submitting to the examination, including the cost of travel,
15 meals, lodging, loss of pay or other like direct expense, but
16 the amount to be compensated for meals and lodging shall not
17 exceed that allowed for nonsalaried public officers under the
18 Per Diem and Mileage Act.

19 F. No attorney shall be present at any examination
20 authorized under this section.

21 G. Both the employer and the worker shall be given
22 a copy of the report of the examination of the worker made by
23 the independent health care provider pursuant to this
24 section.

25 H. If a worker fails or refuses to submit to

1 examination in accordance with this section, the worker shall
2 forfeit all workers' compensation benefits that would accrue
3 or become due to the worker except for that failure or
4 refusal to submit to examination during the period that the
5 worker persists in such failure and refusal unless the worker
6 is by reason of disability unable to appear for examination.

7 I. If any worker persists in any unsanitary or
8 injurious practice that tends to imperil, retard or impair
9 the worker's recovery or increase the worker's disability or
10 refuses to submit to such medical or surgical treatment as is
11 reasonably essential to promote the worker's recovery, the
12 workers' compensation judge may in the judge's discretion
13 reduce or suspend the workers' compensation benefits."

14 Section 2. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2005. _____

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